IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Central Excise Appeal No. 9 of 2004

The Commissioner of Central Excise, Mumbai .. Appellant
V/s.
M/s. Siemens Ltd., Mumbai .. Respondent

Mr. J.H. Motwani for the Appellant
Mr. P.S. Jetly for the Respondent.

CORAM : S. RADHAKRISHNAN &
A.S. AGUIAR, JJ.
DATED : 08.06.2005.

P.C.:-

1. Heard the learned counsel for the Appellant and the Respondent. The following substantial question of law is sought to be raised in the above:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the Commissioner (Appeals) who confirmed the order dtd. 22.4.96 passed by the Additional Commissioner, Central Excise, Mumbai I allowing the availment of MODVAT credit on the gate passes issued and endorsed after 31.03.1994 under Notification No. 16/94 (NT) dated 30.03.1994?"

2. The learned counsel for the Respondent brought to our notice a circular issued by Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi dated 19.11.2001, which reads as under:-

> "Subject : Whether gate-passes issued prior to 1-4-94 but endorsed thereafter, subject to credit being taken on or before 30th June, 1994, are valid duty paying documents covered by the Notification No. 16/94-C.E. (N.T.) dated 30-3-94 - Decision of the Hon'ble High Court of Gujarat.
>
> . I am directed to invite reference to the judgment of Hon'ble High Court of Gujarat in the

case of M/s. Krishna Chemicals, Ahemdabad, passed on 22-11-2000. The Hon'ble High Court has

interpreted Notification No. 16/94-C.E. (N.T.), dated 30-3-94 and held that the gate passes issued prior to 1-4-94 but endorsed thereafter would be valid documents for availment of credit, subject to credit being taken on or before 30th June, 1994.

2. The subject judgment of the Hon'ble High Court of Gujarat has been accepted by the Board. All pending cases may be decided by following the ratio of the said judgment.

3. Field formations may be informed accordingly.

4. The receipt of this letter may please be acknowledged.

5. Hindi version will follow."

In view of the above, we are not inclined to entertain the above Appeal. The Appeal stands dismissed.

(S. RADHAKRISHNAN, J.)

(A.S. AGUIAR, J.)